

ST 04-4

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

No: 03 ST 0000

Sales Tax Exemption Number

v.

**THE ABC CHILDCARE
PROVIDERS' NETWORK,
TAXPAYER**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, Ms. Mary Doe, Mr. John Doe on behalf of The ABC Childcare Providers' Network; Mr. Shepard Smith on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On February 5, 2003, the Illinois Department of Revenue (hereinafter the "Department") denied the second request of The ABC Childcare Providers' Network (hereinafter "ABCCPN" or "applicant") that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On March 17, 2003, ABCCPN protested the Department's decision and requested a hearing, which was held on November 20, 2003, with Jane Doe, president and founder of ABCCPN, testifying. The sole issue to be determined at the hearing was whether ABCCPN qualified for an

exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s denial be affirmed.

FINDINGS OF FACT:

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated February 5, 2003. Tr. pp. 9-10; Dept. Ex. No. 1.
2. ABCCPN, founded in 1998, is an organization of 60 childcare providers in the ABC area. ABCCPN was formed when the Illinois Department of Human Services (“DHS”) expressed a need for a reliable network of childcare providers to whom they could refer people forced to go off welfare and in need of childcare. Ninety percent of the children cared for by ABCCPN are from low-income homes. The children in ABCCPN are from 6 weeks to 12 years old. Tr. pp. 16-17, 34, 37-38, 40, 44.
3. Forty of the childcare providers in ABCCPN are licensed by the Illinois Department of Children and Family Services (“DCFS”) which requires child-care training including instruction in CPR, first aid and an in-house inspection. Licensed providers may care for several children depending on the space in the house. There are twenty unlicensed providers in ABCCPN. They are exempt from DCFS requirements, but can take care of only three or fewer children. Tr. pp. 27-28, 40-42.
4. The purpose of ABCCPN, as stated in its Articles of Incorporation, is to provide information, technical assistance, mentoring and a peer group support

network for childcare providers in economically depressed areas who target at-risk children as their primary customers. Tr. p. 68; Taxpayer's Ex. No. 4.

5. ABCCPN seeks to promote business development in ABC by empowering aspiring childcare providers to become self-sufficient business owners and employers. Dept. Ex. No. 2.

6. ABCCPN is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 13; Taxpayer's Ex. Nos. 2, 3.

7. ABCCPN has five unpaid Board members, including Jane Doe, her husband, a teacher and a DCFS worker. Tr. pp. 34-35; Taxpayer's Ex. No. 1.

8. ABCCPN asks its members for donations but there are no dues. If members cannot donate money, they are asked to donate time to help with fundraisers and field trips. Tr. pp. 32-33, 48-49.

9. "Goodcity" is a not-for-profit organization that provides consultation, financial management and skills training to local organizations. Goodcity maintains ABCCPN's financial records. Tr. pp. 35-36; Taxpayer's Ex. No. 1.

10. For years 2002-2003, ABCCPN's financial statements show contributions of \$110 from individuals, \$6,000 from the Presbytery and \$3,000 from "Other Public Support." In October, 2002, there was an expense of \$2,550 for "Special Events-Food and Equipment." Tr. pp. 47, 72-73, 84; Taxpayer's Ex. No. 1.

11. The \$6,000 contribution from the Presbytery was used to finance nine workshops open to aspiring daycare providers, covering such areas as computer literacy, CPR, first aid, grant writing, taxes for the self-

employed, insurance and general business development and to finance the college education, in the area of child development, for three aspiring daycare providers. Dept. Ex. No. 2.

12. ABCCPN had its first annual health fair on June 11 and 12, 2003, held at New Life Church. The fair brought together low-income families and 25 organizations, including the City of Anywhere, Department of Public Health, Anywhere Public Schools, the Anywhere Police Department, YWCA and medical doctors. The fair serviced over 600 children, parents, and agencies in the community. The fair was advertised in the community and open to the general public. Attendants learned about medical and dental insurance, children were immunized, given identification cards and assessed for vision, hearing and learning disabilities. The health fair was funded by the “Daycare Action Council” and the City of Anywhere. No ABCCPN funds were used for the fair. Tr. pp. 18-21, 46-47, 62; Taxpayer’s Brief, pp. 3-4.

13. ABCCPN coordinates an off-site, evening, college credit class taught by Anywhere City College at Anywhere Park. The class is open to day care providers within ABCCPN and to anyone in the community at college level. The class is advertised in community newspapers and currently, 26 members of ABCCPN are taking the class. The class includes instruction in child development and English and can be used toward an associate’s degree or for eventual childcare licensing. Attendees must pay for the class. The State of Illinois has a program called “TEACH,” which provides 80% reimbursement to those registered and approved for the

class. Some members of ABCCPN are reimbursed for attendance through “TEACH” but no ABCCPN funds are used for the reimbursement. Tr. pp. 21-25, 47-48, 60; Taxpayer’s Brief, p. 5.

14. The Women’s Foundation (which promotes self-help for women) has provided ABCCPN with a \$60,000 grant to coordinate the “IDA (Individual Development Accounts) Program.” Thirty childcare providers in ABCCPN participate in the IDA Program. These ABCCPN members save up to \$50 per month in their own bank accounts over a two-year period and the \$60,000 grant from the Women’s Foundation is used to match the savings and is given to the individual members. IDA is a federal program and the government also matches the funds up to \$50 after a first matcher is secured. To receive matching funds, providers must participate in an eleven-session seminar on financial literacy including instruction on how to manage, save and spend money responsibly, how to incorporate a business, budgeting, how to keep books for a business and how to buy a home. The funds saved may be withdrawn after two years, and can only be used for education, the purchase of a home, or further development of the childcare business. The administrative costs are funded by Household Finance. No ABCCPN funds are used in this program. Tr. pp. 25-28, 36-37, 45-46, 50, 56-58; Taxpayer’s Brief, pp. 5-6.
15. ABCCPN has a written “Linkage Agreement” dated October 10, 2002, with DHS for “TANF” (temporary assistance to needy families) clients. TANF clients are people who are forced to go off welfare by the

government and are in need of a job opportunity and/or childcare. The Agreement provides that ABCCPN will ensure that child care providers in the network meet DHS criteria including training in CPR and first aid, a background examination, a tuberculosis and medical examination, child development classes, referral to GED classes, and training in child disciplinary policy. Some TANF clients are employed in ABCCPN member daycare centers on a 30-day probationary period. For TANF clients who have found a job, ABCCPN also works with DHS to provide childcare referrals, transportation of children to the childcare provider in the community and mentoring. Tr. pp. 31-32; Taxpayer's Ex. No. 5; Taxpayer's Brief, p. 5.

16. ABCCPN channeled \$14,000 in grants from XYZ Foods to ABCCPN members for education programs and \$14,000 in grants from The Family Foundation for reimbursement to ABCCPN members if they complete a sequence of classes. Tr. pp. 36-37, 60.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABCCPN has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

It is well established that there is a presumption against exemption and that therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of the exemption "resolved in favor of taxation." Van's Material Co. Inc. v.

Department of Revenue, 131 Ill. 2d 196 (1989). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist.1991).

ABCCPN seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Incidental acts of beneficence are legally insufficient to establish that the applicant is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

In determining whether an organization is charitable in its purpose, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). ABCCPN’s Articles of Incorporation state that its purpose is to provide technical assistance, mentoring, and a peer group support network for childcare providers in economically depressed areas who target at-risk children as their primary customers. Taxpayer’s Ex. No. 4. An affidavit submitted by Jane Doe, founder of ABCCPN, in support of ABCCPN’s request for a sales tax exemption, states that “[W]e seek to promote business development in ABC by empowering aspiring childcare providers to become self-sufficient business owners and employers.” Dept. Ex. No. 2.

It is impossible to conclude from these provisions that ABCCPN is operated “exclusively” for charitable purposes, as is required for sales tax exemption. Providing technical assistance and promoting business development in order to become “self-

sufficient business owners and employers” are not endeavors recognized by Illinois courts as “charitable.” ABCCPN’s purpose appears to be primarily to further the business interests of childcare providers in the ABC area, and in this regard, it is comparable to a chamber of commerce. Illinois Department of Revenue Regulations concerned with the sales tax exemption for “chambers of commerce” and “business associations” state that these organizations, “as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable purposes, even though such organizations may engage in some charitable and educational work.” 86 Ill. Adm. Code § 130.2005(f). Based on the testimony and evidence presented at the hearing, I conclude that ABCCPN’s main purpose is to “advance the interests” of childcare businesses in the community.

It is also clear from the testimony and evidence presented at the hearing that ABCCPN is not using its own funds to provide any charitable service, but instead channels the funds of other organizations to advance the business interests of ABCCPN members. According to Mrs. Doe’s testimony, ABCCPN’s annual health fair was underwritten by the “Daycare Action Council” and the City of Anywhere. Tr. p. 47. There was no evidence or testimony that ABCCPN spent any of its own funds for the health fair. ABCCPN was simply the “facilitator.” Tr. p. 19. Mrs. Doe also testified that some ABCCPN members receive 80% reimbursement from the State of Illinois’ program known as “TEACH” for taking college-level daycare classes. Tr. p. 60. There was no testimony that any of ABCCPN’s funds were used for this reimbursement. When reimbursement from TEACH is insufficient, ABCCPN has a grant from The Family Foundation. “They gave us money to reimburse all the childcare providers and the people

in the classes, partial reimbursement, after they complete the last class we have.” Tr. p. 60. Again, there was no evidence that ABCCPN’s own funds were used for this reimbursement. The thirty ABCCPN members who participate in the “IDA Program” receive matching funds from the Women’s Foundation and the federal government for saving up to \$50 per month. Tr. pp. 27-28. No ABCCPN funds were used here. ABCCPN received a grant of \$14,000 from XYZ Foods which it used for education programs. Tr. p. 36. Again, there was no evidence that any of ABCCPN’s own funds were involved.

In channeling the funds of the State of Illinois’ TEACH program, the Women’s Foundation, the federal government, The Family Foundation and XYZ Foods to ABCCPN members, ABCCPN is acting as a conduit. ABCCPN is disbursing to its own members funds designated by other organizations for charitable purposes. ABCCPN is not itself dispensing charity with these funds, although the entities that provide the funds may be charitable. My research indicates no Illinois case where an association that channels the funds of other organizations to its own qualified members, is itself considered a charity.

It must also be noted that ABCCPN, while acting as a conduit for the funds of other groups, is promoting business development in the ABC neighborhood. The funds channeled through ABCCPN are going to profit-making enterprises. A childcare provider in ABC may charge \$80/week per child. A licensed provider could earn \$800 or \$900/week for eight to ten children. Mrs. Doe testified that people in ABCCPN are “making a living” providing childcare. Tr. p. 41. According to the Articles of Incorporation, ABCCPN members target “at-risk children as their primary customers” in “economically depressed areas.” Taxpayer’s Ex. No. 4. ABCCPN members may have

made a decision to target certain children but this was a business choice. Even in making this choice, the daycare providers are making money just as are daycare providers in other communities. I am unable to conclude that ABCCPN is a charity when one of its principal functions is to channel the funds of other organizations to promote the business development of profit-making enterprises in the ABC community.

To receive the Women's Foundation's funds, in addition to saving up to \$50/month, ABCCPN members must take an eleven session seminar on financial literacy, including how to keep books, how to incorporate, how to "run a business plan." Tr. p. 50. The charitable benefits, if any, to a child who is being cared for by a daycare provider who is "financially literate" or who can "run a business plan" are incidental and secondary. This seminar is obviously of primary benefit to the daycare provider. The various educational reimbursement programs facilitated by ABCCPN are for people "who would not otherwise be able to afford education and are working toward an associate's degree or eventual childcare licensing." Taxpayer's Brief, p. 5. In this case, there may be benefits to a child in being cared for by an educated or licensed daycare provider. However, there is nothing inherently charitable about helping ABCCPN members attain an associate's degree or a business license. Again, the direct benefit here is to the profit-making daycare provider. The testimony with regard to these activities does not lead to the conclusion that ABCCPN is operated "exclusively" for charitable purposes, although there may, in some cases, be an incidental or secondary benefit to the children being cared for.

None of the funds mentioned in the previous paragraphs appear in ABCCPN's financial statements, as maintained by XXXXX. Taxpayer's Ex. No. 1. It must also be noted that ABCCPN, exempt from federal income tax under Section 501(c)(3) of the

Internal Revenue Code, is required to file Form 990, "Return of Organization Exempt from Income Tax," if its gross receipts are greater than \$25,000 in any year. Taxpayer's Ex. No. 3. The receipts from The Women's Foundation, XYZ Foods and The Family Foundation total approximately \$90,000. No Form 990 was admitted into evidence for ABCCPN and I must conclude from this that ABCCPN does not consider these funds to be its own, but recognizes that it is merely channeling the funds of other organizations to ABCCPN members. In looking at whether ABCCPN is itself a charitable organization, it is necessary to look at what it does, not with the funds it channels, but with the funds donated to ABCCPN for its own purposes.

For years 2002-2003, ABCCPN received \$6,000 from the Anywhere Presbytery and \$3,000 from "Other Public Support." Taxpayer's Ex. No. 1. There was no explanation at the evidentiary hearing as to how the \$3,000 was used. The \$6,000 from the Anywhere Presbytery was used to finance nine workshops open to "all aspiring daycare providers" and "cover [ed] such areas as computer literacy, CPR, First Aid, grant writing, tax for the self-employed, insurance and general business development." The grant was also used to finance the college education in the area of child development for three aspiring daycare providers. Dept. Ex. No. 2. Training daycare providers in CPR and First Aid may have an incidental benefit to the children being cared for. However, ABCCPN's usage of the remaining funds donated by the Anywhere Presbytery clearly advances the business interests of the providers in the network and cannot be considered charitable.

For years 2002-2003, ABCCPN's financial statements, as maintained by Goodcity, show an expenditure of \$2,550 for "Special Events-Food and Equipment" in October, 2002. Taxpayer's Ex. No. 1. At the evidentiary hearing, Mrs. Doe was asked

on cross-examination whether this expenditure was used to fund the annual health fair. She responded “No. Daycare Action Council gave us a thousand dollars.” Tr. p. 47. No follow-up question was asked in cross-examination about the \$2,550 expenditure. In redirect, no further explanation of this expenditure was provided. The \$2,550 is the largest expenditure in the financial statements for year 2002 and represents 63% of “Total Expenditures” for the year. Additionally, there was testimony at the evidentiary hearing that ABCCPN pays an annual fee to “Gifts In Kind International” to receive monthly gifts including surplus items from Bed Bath and Beyond, The Gap, Office Depot, Talbot’s, Home Depot, Reading Is Fun, Toys for Tots and other groups. ABCCPN then distributes the gifts in the ABC community. Tr. p. 29. There is no evidence of this “annual fee” on the financial statements. I have no idea how much the annual fee is and whether ABCCPN uses its own funds for this program or whether it is channeling funds from another organization to participate in “Gifts In Kind International.”

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Any and all doubts that arise in an exemption proceeding, if attributable to evidentiary deficiencies, must be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). In looking at how ABCCPN spends the funds donated to it for its own use, no explanation was offered with regard to ABCCPN’s single largest expenditure of \$2,550 or where ABCCPN gets the funds to participate in “Gifts In Kind International.” Because of these evidentiary deficiencies, ABCCPN has failed to meet its burden of showing that the funds donated to it for its own use are spent for charitable purposes.

Based on the testimony and evidence presented at the hearing, I conclude that ABCCPN's main purpose is to advance the business interests of childcare providers in the ABC neighborhood by channeling funds and facilitating programs specifically designated by other entities for those purposes. Although advancing the business interests of daycare providers in ABC is obviously helpful to the community, any charitable effects inuring to the children cared for are secondary or incidental and do not lead to the conclusion that ABCCPN is organized "exclusively" for charitable purposes. Accordingly, it is my recommendation that the Department's denial of ABCCPN's request for a sales tax exemption be affirmed.

Kenneth J. Galvin
Administrative Law Judge

January 12, 2004